IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 10212 OF 2004

1. The Chemical Moulding Manufacturing)
Co. Pvt.Ltd.)
a company registered under the)
Companies Act 1956, having their)
registered office at Shapoor Baug)
Marol, Andheri (E), Mumbai 400 089.)
)
2. Mr. Adil Gandhy of Mumbai, Indian)
Inhabitant of Mumbai and Director)
and Shareholder of Petitioner no.1)
residing at Kekee Manzil 17, B.J.)
Road, Bandra, Mumbai 400 050. ...) Petitioners

versus

1. Mahendra Popatlal Shah)
)
2. Mrs. Sadhna Mahendra Shah)
Both of Mumbai, Indian Inhabitants,)
having their residence at flat no.22.)
Meera Coop Housing Society ltd.)
L.D.Ruparel Marg, Mumbai 400006.)
and being the trustees of a Private)
Trust known as Shah Associates.)
)
3. Chemould Frames, a partnership firm)
carrying on business at ground floor,)
of the property bearing Municipal No.)
271, Princess street, Bombay 400 002.)..Respondents

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Shri D.D. Madon with Mr. Lyrus Ardeshir i/b.M/s.
Madekar & Co. for the petitioner.
Shri Madhav Jamdar for Respondents 1 and 2.

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CORAM ; R.M.S. KHANDEPARKAR, J.

DATED; 20TH DECEMBER, 2004.

ORAL JUDGMENT;

1. Heard. Rule. By consent rule is made returnable

forthwith.

2. The petitioner challenges the order passed by the lower appellate court, directing the petitioner to deposit sum of Rs.4,90,817.40/- being arrears of rent and further to deposit monthly rent inclusive of permitted increases at the rate of Rs. 3679/-, being contrary to the decree in the suit and the findings arrived at by the trial court in favour of respondents 1 and 2.

3. The learned advocate for the respondent refering to a chart regarding the arrears stated to have been filed by the petitioner, submitted that there was a clear admission about the arrears to the extent of Rs. 4,90,817.40/-. The impugned order is sought to be challeged on various grounds. It is not necessary to address all those grounds, suffice to refer to only one ground that the decree passed by the trial court does not refer to any direction for payment of arrears of rent or the monthly amount to be paid at the rate of Rs. 3679/-. On the contrary the discussion in the judgment passed by the trial court refers to the amount being payable at the rate of Rs. 368.15/- per month. The learned advocate for the respondent having realised the limitations on the part of the respondent to counter the contentions sought to be raised, has

submitted that in case the court is inclined to interfere in the matter while setting aside the impugned order, the lower appellate court be directed to dispose of the appeal within the specified time and with that direction the petition may be disposed of.

4. Considering the fact that the direction issued by the impugned order to deposit the amount of Rs. 4,90,817.40/- as the arrears as well as Rs. 3679/- as the monthly rent payable, being not in concurrence with the decree passed by the trial court, which is the subject matter of the appeal, any direction beyond the scope of adjudication of the matter before the appellate court cannot be sustained. On that count itself the impugned order cannot be sustained and is liable to be set aside. As fairly submitted by the advocate for the respondent, in the facts and circumstances of the case, no purpose will be served in keeping the matter pending for hearing and on that ground itself while setting aside the impugned order, the appellate court is directed to dispose of the appeal as expeditiously as possible and in any case on or before 31st August 2005 after hearing the parties. Needless to say that the setting aside of the impugned order shall be limited to the extent of direction regarding condition for stay of the decree passed by

the trial court. The stay of the decree passed should continue, subject to the Petitioner depositing a sum of Rs. 50,000/- in the appellate court within six weeks. The disposal of the said amount shall be subject to the final decision to be passed in the appeal. The observations made hereinabove are only for the purpose of considering the propriety and legality of the impugned order and this court has not expressed any opinion of any of the issues sought to be raised in the matter.

5. In the result, therefore, the petition succeeds on the limited ground stated above. The impugned order is hereby set aside as stated above and to the extent decided above and the petitioner is permitted to continue to deposit a sum of Rs. 368.15/- per month during the pendency of appeal till the disposal thereof, besides depositing Rs. 50,000/- within six weeks from today and further the appellate authority to dispose of the appeal on or before 31st August 2005 after hearing the parties.

6. Rule is made absolute in above terms with no order as to costs.

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